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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,231	09/09/2004	Rona L. Reid	62413A	2122

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THE DOW CHEMICAL COMPANY
INTELLECTUAL PROPERTY SECTION, P. O. BOX 1967
MIDLAND, MI 48641-1967

EXAMINER

KHAN, AMINA S

ART UNIT	PAPER NUMBER
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1751

MAIL DATE	DELIVERY MODE
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09/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/507,231

Applicant(s)

REID ET AL.

Examiner

Amina Khan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This office action is in response to applicant's amendments filed on June 27, 2007.
2. Claims 1-20 are pending. Claims 1 and 11 have been amended.
3. The objection to the specification is withdrawn.
4. The rejection of claims 1-5,7-9,11-15,17,18 and 19 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Davis, Jr. et al. (US 5,350,423) is withdrawn.
5. The rejection of claims 1-4,7-10,11-16,18 and 19 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over the mopublishing document (<http://www.mopublishing.com/siswimsuit1998.htm>) is withdrawn.
6. The rejection of claims 1-4,7,11,12 and 15 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schilit (US 3,097,192) is withdrawn.

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7. The rejection of claims 1-4,7,8,11,12 and 15 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Mohr Jr. et al. (US 4,345,908) is withdrawn.

8. The rejection of claims 1-4,7,8,11,12 and 15 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Tsuruta et al. (US 3,522,642) is withdrawn.

9. The rejection of claims 1-4,7 and 11-15 under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Djiauw et al. (WO 01/02630) is withdrawn.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim Rejections - 35 USC § 103

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11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1-4, 7-16, 18 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Stutz (US 3,396,529).

Stutz teaches woven or knitted elastic used for swimwear and sportswear wherein the filaments can be made from polyolefins (column 2, lines 5-15; column 2, lines 30-45).

In claims 1-4 and 7-10, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastic swimwear of Stutz would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastic swimwear of Stutz would encompass the claimed limitations because Stutz teach similar elastic products for similar utilities.

Claims 11-16 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to

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show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112, 2113 and 2114.

Regarding the limitations of uniform or rental uniform, these are simply intended uses it would be obvious to use elastic swimwear or sportswear in uniforms or rental uniforms.

13. Claims 1-4, 6-9, 11-15 and 18-20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Ho et al. (WO 99/63021).

Ho et al. teach elastic articles comprising homogeneously branched ethylene polymer wherein good elasticity is maintained after laundering (abstract). Ho further teaches the use of these fabrics in clothing, lab coats, surgical gowns and sports apparel (page 47, paragraph 2). Ho et al. further teach the elastic articles exhibit excellent elasticity at elevated temperatures as well as excellent wash and dry stability (page 8, paragraph 3). Ho et al. further teach woven fabrics (page 49, paragraph 4).

In claims 1-4 and 6-9, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It would be expected that the elastics of Ho et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Ho et al. would encompass the claimed limitations because Ho et al. teach similar elastic products for similar utilities.

Claims 11-15,18,19 and 20 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112,2113 and 2114*.

Regarding the limitation of uniform or rental uniform, these are simply intended uses it would be obvious to use lab coats and surgical gowns in uniforms or rental uniforms.

14. Claims 1-4,7,8 and 11-15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Dutta et al. (US 5,529,830)

Dutta et al. teach knit or woven fabrics and clothing (column 4, lines 55-65) comprising stretchable fabric laminates (abstract comprising polyolefins (column 8, lines 50-55). Dutta et al. further teach that the laminates provide superior wash durability (column 7, lines 5-10). Dutta et al. further teach that the laminate maintained waterproofness over 105 was cycles (column 17, example 2).

In claims 1-4 and 7, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It

would be expected that the elastics of Dutta et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Dutta et al. would encompass the claimed limitations because Dutta et al. teach similar elastic products for similar utilities.

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

15. Claims 1-4, 6-9, 11-15 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830)

Knight et al. teach woven (column 10, lines 45-48) elastic fabrics, which meet the instantly claimed recovery parameters (column 3, lines 20-30; column 8, lines 55-65), comprising homogeneously branched ethylene polymers (column 3, lines 55-60) for making garments such as diapers (column 11, lines 5-15).

In claims 1-4 and 7, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It

would be expected that the elastics of Knight et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Knight et al. would encompass the claimed limitations because Knight et al. teach similar elastic products for similar utilities.

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

16. Claims 1-4, 6-9, 11-15 and 20 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Maugans et al. (US 6,194,532)

Maugans et al. teach elastic woven fabrics, which meet the instantly claimed recovery parameters (column 7, lines 7-10; column 5, lines 40-50), comprising homogeneously branched ethylene polymers (column 5, 50-60) for making garments such as diapers (column 11, lines 35-50).

In claims 1-4 and 7, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It

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would be expected that the elastics of Maugans et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Maugans et al. would encompass the claimed limitations because Maugans et al. teach similar elastic products for similar utilities.

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

17. Claims 1-4, 7, 9-16, 18 and 19 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Heffelfinger (US 2002/0081423)

Heffelfinger et al. teach elastic woven fabrics, which meet the instantly claimed recovery parameters (paragraph 0035), comprising polyolefins (paragraph 0037) for making swimwear and health care garments (paragraph 0033).

In claims 1-4 and 7, the limitations "capable of surviving treatment" are simply functional language and do not distinguish the articles structurally from the prior art. It

would be expected that the elastics of Heffelfinger et al. would inherently possess these characteristics.

In the alternative, it would have been obvious that the elastics of Heffelfinger et al. would encompass the claimed limitations because Heffelfinger et al. teach similar elastic products for similar utilities.

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP sections 2112, 2113 and 2114*.

18. Claim 17 is rejected, under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830) in view of Chi (US 6,666,235).

Knight et al. are relied upon as set forth above.

Knight et al. do not teach denim.

Chi et al. teach that durable lightweight denim may be produced from cotton and polyolefin blends (column 3, lines 45-60; column 4, lines 25-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce denim from the elastic fibers of Knight because Chi et al. teach that it is well known in the art to do so to produce durable denim fabrics. One

of ordinary skill would have been motivated to combine the teachings of the references absent unexpected results.

19. Claim 17 is rejected, under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830) in view of the article "New polyolefin fiber blend makes jeans WR and quick-drying" (Daily News Record, April, 1994).

Knight et al. are relied upon as set forth above.

Knight et al. do not teach denim.

The article teaches that it was well known in the art to combine cotton and polyolefin to produce denim jeans (column 3, lines 45-60; column 4, lines 25-30).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce denim from the elastic fibers of Knight because the article that it is well known in the art to do so to produce wrinkle resistant denim fabrics. One of ordinary skill would have been motivated to combine the teachings of the references absent unexpected results.

20. Claim 5 is rejected, under 35 U.S.C. 103(a) as obvious over Knight et al. (US 5,529,830) in view of the article "New polyolefin fiber blend makes jeans WR and quick-drying" (Daily News Record, April, 1994) and further in view of Rodrigues (US 6,337,313).

Knight et al. and the article are relied upon as set forth above.

Knight et al. and the article do not teach stone washing.

Rodrigues teaches that it is conventional to stone wash denim and polyolefin blends (column 3, lines 39-46; column 9, lines 35-40).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to produce stonewash denim comprising the elastic polyolefins of Knight because Rodrigues clearly teach that it is well known in the art combine similar fabrics and treat them with stonewashing procedures. One of ordinary skill would have been motivated to combine the teachings of the references absent unexpected results.

Response to Arguments

21. Applicant's arguments filed regarding Stutz have been fully considered but they are not persuasive.

The examiner asserts that Stutz do teach elastic and olefins for making swimwear (column 2, lines 5-15; column 2, lines 30-45). Applicant's arguments regarding the process of production are not supported in a declaration showing that Stutz produces elastics with different properties. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to

show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112,2113 and 2114.

The rejections are maintained.

22. Applicant's arguments filed regarding Ho et al. have been fully considered but they are not persuasive.

Ho et al. is directed to no woven fabrics (page 49, lines 25-30) for garments made with similar materials that can withstand laundering and elevated temperatures (abstract) and have excellent permanent set (pages 9 and 10). Applicant's arguments regarding the properties of the fabrics of Ho et al. are not supported in a declaration showing testing of the properties and durability of the fabrics of Ho et al. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112,2113 and 2114.

The rejections are maintained.

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23. Applicant's arguments filed regarding Dutta et al. have been fully considered but they are not persuasive.

Dutta et al. is directed to olefins (column 8, lines 45-55). Applicant's arguments regarding the properties of the fabrics of Dutta et al. are not supported in a declaration showing testing of the properties and durability of the fabrics of Ho et al. Applicants' arguments are conclusory statements not supported by factual evidence, see *In re Lindner*, 457 F.2d 506, 173 USPQ 356 (CCPA 1972).

Claims 11-15 are product by process claims. Any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making. The burden is on applicants to show product differences in product by process claims, see *MPEP* sections 2112, 2113 and 2114.

The rejections are maintained.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amina Khan whose telephone number is (571) 272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AK

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September 14, 2007

Lorna M. Douyon
LORNA M. DOUYON
PRIMARY EXAMINER